GOVERNMENT OF KARNATAKA

Social Welfare and Labour Secretariat

Labour dispute.—Industrial dispute between the workmen and the management of M/s. Sri Krishna Rice and Saw Mills, Naimpalli, Kallianpur, District Sourth Kanara.

Award of the Labour Court, Mangalore, published.

Read the following papers.

(1) Letter No. A/ID-21/73-74, dated 29th November 1973 from Sri H. S. Venkatasubbaiah, Presiding Officer, Labour Court, Mangalore.

BEFORE THE LABOUR COURT AT MANGALORE

Dated 29th November 1973.

Reference (ID) (LCM) No. 21 of 1973

Present

H. S. Venkatasubbaiah, B.A.,LL.B.
Presiding Officer

Between :—

I Party.—Workmen, represented by the Secretary, Udipi Taluk General Workers' Union, Udipi, South Kanara.

And

II Party.—The Management of M/s. Sri Krishna Rice and Saw Mills, Naimpalli, Kallianpur P.O. Udipi Taluk, South Kanara.

AWARD

The State Government of Karnataka being of the opinion that an Industrial Dispute exists between the workmen and the management of M/s. Sri Krishna Rice and

Saw Mills, Naimpalli, Kallianpur, have referred the said dispute to this court for adjudication, by their Order No. FCL 525 LLD 72, dated 30th May 1972, under Section 10 (1) (c) of the Industrial Disputes Act, 1947. The points of dispute as specified in the order of reference are the following :—

"1. Are the Management of Sri Krishna Rice and Saw Mills, Naimpalli, Kallianpur P. O. Udipi Taluk, South Kanara District justified in dismissing the services of Sri K. Rangayya Poojary, with effect from 11th October 1973 ?

2. If not, to what relief the said workman is entitled?"

2. The first party has filed his claim statement stating that he had been working at second party's Rice and Saw Mill for more than 4 years and that the second party management never used to give any benefit to workers as stipulated by law and that on 22nd September 1971 the Labour Inspector Udipi visited the Mill and made enquiries with workers about the working conditions of the workers and the workman. K. Rangayya Poojary answered all the queries of the official and thereafter the management had an eye on him and was trying to deprive him of his service and that the second party management has deliberately foisted false charges with a view to victimise the workman. It is contended that the orders of dismissal passed against the workman are illegal and unjustified for the following reasons, namely, (1) the charges are very vague and lack in material particulars and the entire charges are false, (2) the enquiry is vitiated in as much as the workman has not been informed of the names of the witness and the alleged reports were also not made available to the workman and (c) the alleged findings recorded, the copy of which has not been communicated to the workman, cannot be justified. Therefore, it was prayed that an award be passed directing the second party management to reinstate the workman Sri K. Rangayya in his original

post with continuity of service and full back wages from 11th October 1971.

3. The second party has, in its counter statement denied that the first party workman was working under the second party for more than four years and that the second party never gave any benefits to the workers as stipulated by law and that the second party had an eye on him and was trying to deprove him of his service. It is pleaded that the second party, after issuing the show-cause notice and getting explanation from the first party workman, issued a charge sheet on 6th October 1971 for which explanation was received on 8th October 1971 and that thereafter a further memo was issued to the first party and also a notice on the same day and that on 15th October 1971 explanations were received from the first party for both and that an enquiry was held on 29th October 1971 and 2nd November 1971; that after careful consideration of the evidence led in the enquiry the Enquiry Officer came to the conclusion that the charges were proved and the second party agreed with the conclusions of the Enquiry Officer and dismissed the first party workman and that there was a fair enquiry in accordance with the principles of natural justice and there was no victimisation as contended by the first party and that the first party did not ask for the list of witnesses and the non-supply of a copy of the findings of the Enquiry Officer to the first party did not vitiate the enquiry. The second party has prayed that an award be passed rejecting the reference with costs to the second party.

4. On the above pleadings filed by the parties, the following additional issues have been raised:—

(1) Is it proved by the workman that the enquiry held by the management is improper and does not satisfy the rules of natural justice?

(2) Is it proved by the workman that the enquiry has been instituted by the management with a view to victimise him?

(3) Does the material on record prima facie establish the charges levelled against the workman ?

5. The first party workman is represented by Sri K. Moosabba before this Court. On behalf of the first party the workman Sri K. Rangayya Poojary has been examined as W.W-1 and Sri Vincent S. D'Souza, Labour Inspector Udipi has been examined as W.W-2. On behalf of the second party Management Sri Rangaṅath Hegde and Sri V. Panduranga Shenoy have been examined as M. W-1 and M. W. 2 respectively. The documents filed by the first party have been marked as Exhibits W-1 to W-9 and the documents filed by the second party management have been marked as Exhibits M-1 to M-14.

6. The charges against the accused and the notice of enquiry given by the managemnt is marked as Ex. M-5 The following charges are noted in Ex. M-5 :—

1. That on 23rd September 1971 having been working as a yTemperary Sawyer the first party workman was negligent and careless in using the Bend-saw blades resulting in cracks thereto and consequently loss was caused to the management.

2. The first party workman has disobeyed the directions and instructions given by the managemnt and there have been dereliction of duties on his part as set out below :

(a) He had on diferent occasions neglected to prepare saw blades in spite of instructions and thereby affected the factory work :

(b) As his work on the pushing side of the Saw-bench was not satisfactory resulting in damage to the machinery (including the blades), he was directed to work in the pulling side of the saw-bench which he had disobeyed ;

c) That while giving direction to the first party worker to do his work in the proper, manner he has been consistently scolding the clerk, and the management in abusive language.

d) Since the receipt of the notice dated 27th September 1971, he has not given explanation before the stipulated time but sent a belated reply and despite orders of the management he has not been working in the factory, but sitting idle till 6th October 1971.

e) He had acused the manager falsely that the had abused and threatened him.

f) The first party worker has maliciously and purposely attempted to cause loss to the management.

g) He had been consistently trying to create discontent and disaffection among the employees of the second party.

7. M. W. 1 Sri Ranganath Hegde, who was the Enquiry Officer in the domestic enquiry, has given his finding as per Ex. M-2. He has held that the first party workman had been a sawyer on daily wages who was doing casual sharpening work also now and then. His finding on the first charge was to the effect that due to the negligent and careless work of the accused worker cracks were casued to the new saw blade on 23rd September 1971 leading to loss to the management. On charge No. 2a he has not held against the workman. On charge No. 2b his finding was that Sri Rangayya Pojari did, on 23rd September 1971, and continue therafter to disobey the reasonable and legitimate order of his superiors On charge No. 2c he has not held against the first party workman. On charge No. 2d his finding was to the effect that the accused worker had not been doing any work after 23rd September 1971 despite the lawful orders of the management. On charge No. 2e

also the Enquiry Officer has not held against the workman. On charge No. 2f he has held that the accused worker's refusal to do the changed work on and after 23rd September 1971 is purposeful and could reasonably be out of malice against the management for the change in his work effected by them immediately after the mishap on 23rd September 1971. On charge No. 2g the finding of the enquiry officer was to the effect that the behaviour and attitude of the accused worker on and after 23rd September 1971 in not following the lawful dictates of the management was of the nature to create discontent and disaffection among his co-workers. of course he has stated in his report that the management may take whatever action they deemed fit.

8. Ex. M-3 is the show-cause notice issued by the management on 27th September 1971 to the worker calling upon him to give explanation within 24 hours. In that the management has stated that on account of the negligence of the first party workman in using the blades on several occasions the work had to be stopped and that inspite of warnings given to him he did not improve and that on 23rd September 1971 when he was working as a sawyer the new fitted blade cracked on account of his negligence and that he should give explanation within 24 hours. For that the worker gave a reply by registered post on 30the September 1971 as per Ex. M-4 denying the allegations. In that explanation he has stated that falling of cracks in the blade is quite natural and it is unfair that the blade has been ascribed on him and that on the specific instance of the breaking of the blade on 23rd September 1971 he had explained that it was due to using the 18 gauge blade meant for Bandsaw machine on the Ringsaw machine which is a bigger machine and should have been provided with a 19 gauge blade and that when the new blade of 18 gauge was provided for the machine, he had pointed out the discrepancy and that his submissions were not heeded then and that it was due to using the wrong type of blade that cracks developed in the blade. Further he has stated that since 23rd September 1971, 5 blades have broken and that on 23rd

September 1971 one blade had been broken in the afternoon and that the cracks in the blade were not due to any negligence on his part. The worker has denied the charges contained in Ex. M-5, as per Ex. M-6. He had denied the charge that despite the orders of the management he had not been working in the factory but sitting idle. He has stated that the management had asked him not to touch the machine and that he had been physically prevented from working and that he had been told that it did not matter even if he was to remain idle and that he should not do any work. Further he has stated that he had been asked by the management to simply sit down at a place which instructions be had obeyed. By a notice given by the management dated 11th October 1971, the management among other things, had stated that the enquiry would be held on 29th October 1971 at 11 a. m. and that he had already been told as to who was going to be the enquiry officer and also the place where the enquiry would be held. Again the worker had given a reply as per Ex. M-9 denying all the allegations made against him. worker had been suspended from 11th October 1971 pending enquiry. Ex. M-7 is the suspension notice given to the worker. For that he has replied as per Ex. M-9. Ex. M-14 is a communication issued to the first party workman by the management dismissing him from service effect from 11th October 1971 and asking him to settle his dues, if any, within tow days from tthe date of receipt of the order.

9. The management has relied on the domestic enquiry held against the workman only in support of its case. The first point for consideration in this case is whether the first party workman was a sawyer or a sharpener. As stated above, the Enquiry Offcer M. W. 1 has held that the first party workman was only a sawyer and not a sharpener. The first party workman has admitted in his evidence that he had been given an Attendance Pass Book, but he had not produced the same. It has been sugested to him in his cross-examination that the designation of sawer has ben noted against his name in the atten-

dance pass book given to him. Of course the workman had admitted that the above document was at home but he has not produced the same either at the domestic enquiry or in this court to prove that he was a sharpener. Even his own witness before the domestic enquiry has stated to the effect that the first party workman began to work with the management about 3 1/2 years' prior to his examination on 2nd November 1971 and that the first party workman had worked for 15 days as a sawyer and that afterwards he was working as sharpener and he was working so till the last monsoon and that since then he was working as a sawyer Panduranga Shenoy who was a clerk under the second party management and who has been examined as first witness for the management before the domestic tribunal has stated that the first party workman was working as a temporary worker on daily wages and that he had been taken as a sawyer and that he had been given an attendance pass book and that his designation as a sawyer was shown in that attendance pass book and that no sharpener's vanancy was existing at the time of Rangayya Poojary's appoiontment and that thre was an incumbent by name P. K. Damodaran at that time for that job and that he was working the month of May 1968 and that even after May 1968 different workers had been doing sharpener's work. His evidence also goes to show that Rangayya Poojary was also doing sharpener's work sometime. The second witness for the management Kumaran Kutti, who was working under the second party has also stated to the effect that the first pary workman was doing the work of a sawyer. In the cross-examination he has stated that when Rangayya Poojary joined the Company he was doing the work of a sawyer and that about six month he worked as a sawyer in the beginning and then he worked also as a sharpener thereafter and that after the mill re-opened at the close of the monsoon Rangayya Poojary worked as a sawyer only. Chandu Poojary, witness No. 3 for the management who has worked in the company for about 7 or 8 years, has stated in his cross-examination that when Rangayya Poojary came to the company he was attend-

ing to sharpener's work also and that he did not know how long he was doing sharpener's work and that after the monsoon he had been working as a sawyer. Kunjiraman, who has been examined as first witness for the workman has stated to the effect that the first party workman Rangayya Poojary was working in the re-sawing machine as a sawyer and that he did not remember how long he worked that way and that it might be for about six months, then he was working as a sharpener and that he was working as a sharpener till some time before the monsoon and that after the monsoon he had been working as a sawyer and that he was asked to do sawing work. According to the statement of the first party workman, he was appointed as a permanent sharpenar and that he was working as a sharpener after a couple of months after 12th March 1968 when he joined service. His evidence also goes to show that he had been working as a sharpener till the closing down of the mill for monsoon and during that period one Velayudhan also had worked as a sharpener for about a fortnight or so and at that time he was asked to work as a sawyer along with Challa Poojary and that he had worked as a sawyer and that he was again asked to work as a sharpener and that he told the management that the sharpening machine was not in order and if that was repared he would work as a sharpener. then the sharpening machine was got repaired and he continued to work as a sharpener and that after the re-opening of the mill he was asked to work as a sawyer on the feeding side of the re-sawing machine and that he had worked accordingly till 23rd September 1971. So even according to the evidence of the first party workman him self, it is clear that he was working as a sawyer at the relevant time when the alleged incident took place on 23rd September 1971. So the evidence on record goes to show that the first party workman was working both as a sawyer and also as a sharpener and that he was not appointed as a sharpener alone, but he was appointed as a sawyer. If really he was designated as a sharpener and the worked as a sharpener only, it was easy for the first party workman to produce his attendance pass

book which was with him. He had not produced the same. In the above circumstances. I am of the opinion that the Enquiry Officer was not in error in holding that Rangayya Poojary, the first party workman, had been working as a sawyer on daily wages who was doing casual sharpening work also now and then.

10. The first charge against the first party workman in the domestic enquiry was that on 23rd September 1971 having been working as temporary sawyer, he was negligent and careless in using the Bend-saw blades resulting in cracks thereto and consequently loss was caused to the management. The Enquiry Officer on this point has stated as follows :—

> "The accused workman in his reply dated 30th September 1971 has stated that" on the specific instance of breaking of the blade on 23rd September 1971 mentioned by you in your memo, I have to submit that it was due to using the 18th guage blade meant for Bandsaw machine on the ringsaw machine which is a bigger machine and should have been provided with a 19 guage blade". In his reply dated 8th October 1971 he has said "The cracks occurred because the Bandsaw blade is unsuitable to this machine which I had pointed out at the very baginning". Again in his reply dated 15th October 1971 he had said "I reiterate and stand by all that, I, have mentioned in my letter of 8th October 1971". That means in all his replies he had said and maintained that on 23rd September 1971 the cracks had occured but were due to the use of wrong blade".

Further he has stated as follows :—

> "During the personal enquiry, when the manufacturer's leaflet and bill revealing identical specifications in respect of the horizontal

Bandsaw and the vertical Bandsaw, were produced an appreciable shift in the defence of the accused workman towards this charge was noticed".

He has further stated that in his report as follows --

"Now we have to see whether the saw blade cracked because the blade used was not the recommended one. An examination of the bill for the purchase of the Horizontal and vertical Band saws, reveals that both are of 42 inches size. The manufacturers' chart for the vertical Bandsaw and the specifications for Horizontal Bandsaw, Ex. 2 (Ex. M-1(a) in this court) show that both the machines has the same r.p.m. and consume same power. Since the wheel diameters over which the saw blades are fitted, of both the machines are 42 inches as noted above, I say that the same blades could be fitted to both the machines."

But in my opinion the above reasoning of the Enquiry Officer is not correct. I have gone through Ex. M-1(a). No doubt for horizontal sawing machine of 42 inches Diameter of Saw 15 H.P. motor was maximum H.P. required while for Bandsaw machine 12½ to 15 H.P. motor has been shown to be the maximum H.P. required. So far as the length of the Saw blade required and the gauge etc., it has been stated that for Bandsaw machine and Parts 19 gauge saw blade was required of 23½ inches length. So the contention of the worker to the effect that 18 gauge blade meant for Bandsaw machine should not have been used for Ringsaw machine which is a bigger machine and that it should have been provided with a 19 gauge blade, has got some support from the "Details and Specifications of 'Uneeque' Bandsaw Machines (Ex. M-1(a). The worker's contention that the breaking of the blade was due to the use of 18 gauge blade, has got some force and the Enquiry Officer appears to be wrong in saying that the

same blades could be fitted to both the machines. This aspect of the case must be taken into consideration along with the oral evidence adduced before the Enquiry Officer while considering the first charge.

11. Coming to the oral evidence on the first charge, Panduranga Shenoy, witness No. 1 for the management has stated to the effect that the saw blade fitted to the re-sawing machine on 23rd September 71 was a new one fitted on that day alone and that blade got cracked that day and that because of excessive force applied by Rangayya Poojari, the sawyer working on the feeding side, that blade got cracked and that after that till 30th September 71 no other blade cracked and that no other blade got cracked on 23rd September 71 either. He has also stated to the effect that he did not know whether there was any fault in the machinery and that there was none so far as he knew. Further he has stated that Rangayya Poojary had never complained that there was any fault in the machinery. He has not been cross-examined by the workman and the Enquiry Officer has stated to the effect that Rangayya Poojary submitted that since the witness would go on asserting his own deposition no useful purpose would be served by his cross-examination and that he would not cross-examine him. Kumaran Kutty, witness No. 2 for the management, who was working in the second party's mill for the last 9 years, has stated to the effect that the re-sawing machine was fitted with a brand new saw on 23rd September 71 and Rangayya Poojary was working on the feeding side of the re-sawing machine that day and that the new blade got cracked that day on account of excessive pressure applied and that he had informed the clerk Sri Panduranga Shenoy that day that excessive pressure should not be applied and if applied the blade is liable to crack and that Sri Panduranga Shenoy then came to the sawing site and informed Sri Rangayya Poojari to be careful and push the sizes slowly and that even after the new blade cracked the re-sawing was carried on with another blade and with another worker on the feeding side and that the

machine was repaired on 30th September 71 and till then the work was carried on uninterruptedly and no blade got cracked during that period. In cross-examination he has stated to the effect that Sri Shenoy asked him to prepare the new blade for the re-sawing machine on 23rd September 71 and that he had informed that the saw blade fitted on the re-sawing machine had small teeth and if more load was applied it would produce sound and might get damaged. He has also stated that the damage could occur due to the fault in the machine also and that two blades fitted after two week got cracked. So his evidence goes to show thaa the blade that was fitted on 23rd Sepptember 71 had small theath. Chandu Poojary, witness No. 3 for the management, has stated to the effect that on 23rd September 71 the re-sawing machine was fitted with a new saw blade and that blade got cracked on that day on the back side and that the blades get cracked if the way they feed the timber is improper or if the machine is faulty. Further he has stated to the effect that Rangayya Poojary was working on that day on the feeding side and the blade got cracked which he worked and that Sri Panduranga Shenoy had asked Rangayya Poojary that morning that he should feed carefully and that Rangayya Poojary went on working. He had also stated that after that till 30th September 71 the sawing was carried on without interruption and that during that period old blades had cracked and that no new blade was cut. This witness had been asked to work on the feeding side of the machine after the new blade got cracked and he changed the blade by an old one and worked. He has also stated to the effect that after about ten or twelve days or so the machine was repaired and two new blades were joined and used on that machine and out of that one blade only cracked because of misalignment. Thus the evidence adduced on behalf of the management goes to show that a new blade with small teath had been fitted on 23rd September 71 and that Rangayya Poojary, the first party workman, was working on the feeding side and that the new blade got cracked when he was working and it was also not disputed that an eighteen gauge blade had been

used by the management on that day while the specification in the pamphlet Ex. M-1(a) goes to hsow that a 19 gauge blade should be used. It is also in evidence that the machine was got reparied on 30th September 71 or thereabout and that in the meanwhile some blades also got cracked. No one has deposed that he actually saw Rangayya Poojary using excessive force or pressure in feeding the timber to the machine on that day. In the above circumstances, I am of the opinion that there was the possibility of the new blade having cracked because an 18 gauge blade was used instead of 19 gauge blade and a blade with small teath was also used. As against the above evidence of the management, Kunjiraman, witness No. 1 for the first party workman, has stated to the effect that sometime after the cracking of the new blade somebody had repaired the machine. Rangayya Poojary, the first party workman, in his statement before the enquiry officer has stated to the effect that he had informed the management that the machine was jerking and was not in order and that he had also informed them that the new blade issued on 23rd September 71 was meant for the horizontal bandsaw and was of 18 gauge and that the management insisted on fitting the saio olade itself to the vertical re-sawing bandsaw and that he fitted the same and the blade got cracked while operating, but it was not while he was feeding and that it was while Chandu Poojary was feeding. Of course the evidence of the workman to the effect that the neww blade was cracked while Chandu Poojary was working on the feeding side, cannot be believed at all as that is a new stand taken by the workman. So also the evidence of George D'Souza, witness No. 2 for the first party was to the effect that on 23rd September 71 Rangayya Poojary did work on the sawing machine and that afterwards himself and Rangayya Poojary went to take tea and that when they returned after taking tea Chandu Poojary was working and at about 12-15 p.m. they saw the crack appearing on the blade. Of course the first party workman, in his evidence, has denied that the crack appreared when he was working on the machine. But in his reply (explanation) Ex. M-4 to the show cause notice Ex. M-3, he

had not stated to the effect that the blade got cracked when Chandu Poojary was working. Therefore his defence at the time of his evidence before the domestic tribunal cannot be relied upon. No doubt from the evidence adduced on behalf of the management itself it becomes rather doubtful as to whether Rangayya Poojary applied excessive pressure in feeding the timber to the machine and the blade cracked on account of the excessive pressure applied by him. On the other hand, as stated above, a reasonable doubt arises in the mind of the Court that the crack might have appeared because 18 gauge blade was used instead of a 19 gauge blade which was specified to be used as per Ex. M-1(a) and as also the new blade had small teeth. Taking into consideration all the relevant evidence on record, I am of the opinion that the first charge has not been proved against the workman and that the Enquiry Officer has erred in holding that the first charge was proved against the first party workman.

12. So far as charge No. 2(a) was concerned the representative of the management did not press this charge before me. Apart from that fact excepting the testimony of Panduranga Shenoy, witness No. 1 for the management in that regard, there is no other evidence to show that the first party workman and on different occasions neglected to prepare saw blades inspite of instructions and thereby affected the factory work. Hence my finding on charge No. 2(a) is in the negative.

13. Charge No. 2(b) was to the effect that the first party workman was directed to work in the pulling side of the saw-bench which he had disobeyed to do so. The evidence adduced before the Enquiry Officer on this charge, in my opinion, is sufficient to show that the said charge has been proved before the enquiry officer. Panduranga Shenoy witness No. 1 for the management, has sowrn before the enquiry officer to the effect that he asked Rangayya Poojary to work on the receiving side of the saw after the crack down of the new blade on 23rd September 71 and that he

refused to work on the receiving side of the saw-bench but insisted on working on the feeding side and that he asked another worker to work on the feeding side thereafter in the place of Rangayya Poojary,, the first party workman and that Rangayya Poojary did not perform any work from 23rd September 71 to 27th September 71 and that even then he was given attendance on compassionate grounds hoping that he would improve. Further he has stated that Rangayya Poojary was suspended with effect from 11th October 71 and that till he was suspended he was not doing any work in the company. This witness has not been cross-examined by the first party workman as he has refused to cross-examine him. Chandu Poojary, witness No. 3 before the enquiry, on behalf of the management, has corroborated theh testimony of Sri Panduranga Shenoy witness No. 1. His evidence was to the effect that when the sawblade got cracked Sri Panduranga Shenoy came and told Rangayya Poojary that because he was feeding with excessive force the new blade had cracked and that he should not therafter work on the feeding side and that he should work on the receiving side. Even George D'Souza, witness No. 2 for the first party workman, has stated in his cross-examination to the effect that Sri Panduranga Shenoy asked the first party workman at about 12-15 p.m. to work on the receiving side. Rangayya Poojary, the first party workman, in his statement before the enquiry officer, has of course stated as follows: "I deny that I had disobeyed the orders of my superior on the 23rd or on any other day.....I did not do any work after the 23rd of September because I was allotted other work than sawing". In cross-examination to a qusetion put to him as follows: "Have you been prevented from doing other work than sawing on the feeding side after the 23rd of September 1971 ?", he had answered as follows: "I have not been asked to do other work. If I had been asked to do other work I would have told whether I know that work". So it is very clear from the statement of the first party workman himself that he did not do any work after 23rd September 1971. In Ex. M-6 which he has replied to the charges contained in Ex. M-5, he has stated as

follows:—"But my superiors thought it fit to ask me to work not on the pulling side as made out in the memo; they asked me to carry the sized timber which was not my work as a sawyer". He has also stated to the effect that he had been physically prevented from working and he had been told that it did not matter even if he had to remain idle and that he should not work. He has also stated that he had been asked by the management to simply sitdown at a place, which instruction he had obeyed. This explanation and the evidence of the first party workman that he was asked to do other work, cannot be believed at all in view of the evidence of witness No. 1 and 3 for the management and witness No. 2 on behalf of the first party workman, which was to the effect that witness No. 1 Sri Panduranga Shenoy asked the first party workman to work on the receiving side after the crack appeared in the saw on that day i.e., on 23rd September 1971. It has been admitted that the first party workman did not do any work after the crack appeared in the new blade. Therefore, it is very clear that the first pary workman wilfully disobeyed the orders of his superior namely, Panduranga Shenoy. It was contended that he was not a sawyer and therefore his not doing any work after 23rd September 71, would not be disobeying the orders of the management. But, I am unable to accept that contention. The first party workman himself had admitted and has also stated in his reply Ex. M-4 which is the explanation given to the show-cause notice Ex. M-3, that he was working from 9th August 1971 onwards as a sawyer as per instructions of the management. Therefore, in my opinion, the enquiry officer M.W. 1, was right in holding that the charge No. 2(b) was proved against the workman.

14. Charge No. 2 (c) was to the effect that the first party workman was consistently scolding the clerk and the management in abusive language. Of course the enquiry has not held that the charge was proved on the ground that excepting the evidence of the clerk before him, there was no corroborating evidence. I think he was quite right in that regard.

15. Charge No. 2 (d) was to the effect that the first party workman did not give his explanation before the stipulated time and that despite the orders of the management he had not been working in the factory, but sitting idle. The workman had given his explanation as per Ex. M-4. Of course he had not replied within 24 hours, but he had replied within a reasonable time. Therefore, the first part of the charge is not proved. But the second part of the charge that he had not been working in the factory, but was sitting idle, had been proved for the same reasons as I have mentioned for charge No. 2 (b). Charge No. 2 (e) was to the effect that the first party workman abused the manager falsely that he had abused and threatened him. The enquiry officer has not held that this charge has been proved. The management did not press this charge before me. Apart from that fact, excepting the evidence of Sri Panduranga Shenoy, before the enquiry officer, there is absolutely no evidence, worth the name, on this point. Hence I hold that this charge has not been proved.

16. Charge No. 2 (f) was to the effect that the first party workman had maliciously and purposely attempted to cause loss to the management. The enquiry officer has held that the accused worker's i. e., first party workman's refusal to do the changed work on and after 23rd September 1971 is purposeful and could reasonably be out of malice against the management for the change in his work effected by them immediately after the mishap on 23rd September 1971. But there is absolutely no evidence, worth the name, in this regard adduced before the enquiry officer. So, in my opinion, the first party workman's refusal to do the changed work might have been purposeful, but it cannot be held that it was malicious and with a view to cause loss to the management. Hence in my opinion, charge No. 2(f) had not been proved. The last charge [charge No. 2 (g)] against the first party workman was to the effect that he had been consistently trying to create discontent and disaffection among the employees of the second party. The enquiry officer has held that the behaviour and attitude of

the accused worker on and after 23rd September 1971 in not following the lawful dictates of the management was of the nature to create discontent and disaffection among his co-workers. The evidence adduced by the management in that regard is that of Panduranga Shenoy, witness No. 1 for the management, who has stated that till he was suspended, the first party workman was not doing any work in the company and that that behaviour of the first patry workman was producing disaffection and discontent in the minds of the other workers. I think there is substance in that evidence because when the first party workman did not work from 23rd September 1971 till he was suspended when he was asked to work on the feeding side of the sawing machine, it will not be unreasonable to hold that his disobedience would bring discontent and disaffection among the co-workers. In that view of the matter, I am of the opinion that the enquiry officer was right in holding that charge against the workman was proved. Hence I hold that charge No. 2 (g) has been proved against the workman.

17. It is true as contended by the representative of the first party that Rangayya Poojary, the first party workman, had complained to the Labour authorities when the Labour Inspector visited the factory on 22nd September 1971 and made enquiries with the workmen. The fact that the Assistant Labour Commissioner and the Labour Inspector (W.W. 2) had visited the factory on 22nd September 1971 was not disputed. It was also not disputed that the management had not maintained bonus register, leave register, maternity register of the workers including the first party workman and the workers had complained against the management. But that will not be a ground to hold that the enquiry was stated against the first party workman on that account. It is clear from the evidence on record that the new saw blade got creacked on 23rd September 1971 when the first party workman was working on the feeding side of the saw machine and it is also clear that the first party workman had disobeyed the orders of Sri Panduranga Shenoy, in not working on the receiving

side afterwards. Therefore it cannot be held that false charges were framed against the first party workman merely because he had complained to the Labour authorities. Therefore in my opinion, the contention of the first party workman to the effect that he had been falsely implicated, cannot be believed at all. Therefore it cannot be said that the management had instituted the enquiry with a view to victimise the first party workman.

18. In my opinion, it cannot be held that the enquiry held by the management is improper and did not satisfy the rules of natural justice. The workman had been given a show-cause notice and also charges and he had given explanations and an enquiry was held by M.W. 1 Sri Ranganath Hegde. His evidence goes to show that the workman Rangayya Poojary was present when the enquiry was held and that he had cross-examined the witnesses examined on behalf of the management and he had also examined a defence witness and himself. The evidence of M.W. 1 also goes to show that every opportunity was afforded to the workman to defend himself at the time of enquiry. Of course he has admitted that the names of the witnesses to be examined were not informed to the worker before they were examined. But it is not the duty of the enquiry officer to give the list of witnesses unless the workman against whom the enquiry was to be held, required the same. Apart from that fact, the witnesses examined before the enquiry officer were all workers in the Saw Mill itself. M.W. 1 has denied in his evidence that he had recorded only the facts that were in favour of the management. He has also denied the fact that the statements of the witnesses had not been read over to the witnesses. The first party workman himself has admitted before this court, in his evidence, that he did not ask the enquiry officer or any one as to who would be examined on behalf of the management or to furnish the list of witnesses to be examined on behalf of the management. He also admits that he was present throughout the enquiry. Of course later on he states that he did not cross-examine

the witnesses and that the witnesses were not examined in his presence. But in view of the evidence of M.W. 1, it must be held that the witnesses were examined in the presence of the first party workman and the first party workman has cross-examined the witnesses Nos. 2 and 3 before the enquiry officer and he refused to cross-examine witness No. 1 for the management. Taking into consideration all the above facts, I hold that the enquiry has been held by the management in a fair and proper manner and in accordance with the principles of natural justice.

19. For the reasons stated above, my findings on the additional issures framed in this case are as follows :—

Issue No. 1—It is not proved by the workman that the enquiry held by the management is improper and does not satisfy the rules of natural justice.

Issue No. 2—It is not proved by the workman that the enquiry has been instituted by the management with a view to victimise him.

Issue No. 3.—It has been proved that the first party was directed to work in the pulling side of the saw-bench which he had disobeyed and that despite the orders of the management he had not been working in the factory, but sitting idle and that he had been consistently trying to create discontent and disaffection among the employees of the second party. But it has been proved that the first party workman was negligent and careless in using the Band-saw blades resulting in cracks there to and consequently loss was caused to the management and that he had on different occasions neglated to prepare saw blades

inspite of instructions and thereby affected the factory work. It has also not been proved that the first party had been consistently scolding the clerk and the management in abusive language and that he had accused the manager falsely that he had abused and threatened him and that he had attempted to cause loss to the management.

20. The management has taken into consideration the enquiry report of the enquiry officer and dismissed the worker. Although the first charge has not been proved yet I have held that charges No. 2(b), 2(g) and the second part of 2(d) levelled against the first party workman had been proved. The said charges proved against the workman are of serious nature as the worker had not obeyed the reasonable orders of the management and had not worked from the afternoon of 23rd September 1971 till he was suspended. Therefore, it cannot be held that the punishment of dismissal imposed on the first party workman was disproportionate to the charges proved against him. Hence I see no reason to interfere with the dismissal order passed by the management. In the above circumstances, I answer the points of dispute in the terms that the management of Sri. Krishna Rice and Saw Mills, Naimpalli, Kallianpur P. O. Udipi Taluk, South Kanara District, is justified in dismissing the services of Sri K. Rangayya Poojary with effect from 11th October 1971 and that the said workman is not entitled to any relief in this case.

21. In the result, I pass an Award holding that the management of Sri Krishna Rice and Saw Mills, Naimpalli Kallianpur P. O., Udipi Taluk, South Kanara District, is justified in dismissing the services of Sri. K. Rangayya Poojary, with effect from 11th October 1971 and that the said workman is not entitled to any relief in this case. In

the circumstances of the case, the parties are directed to bear their respective costs.

H. S. VENKATASUBBAIAH,

Presiding Officer,
Labour Court, Mangalore.

Mangalore
Dated: 29th November 1973.

ORDER

Bangalore, dated the 29th December 1973

S.O. 542.—Whereas by State Government Order No. FCL 525 LLD 72, dated 30th May 1973 the industrial dispute between the workmen and the management of M/s. Sri Krnshna Rice & Saw Mills, Naimpalli, Kallianpur, District South Kanara, was referred to the Labour Court, Mangalore, for adjudication.

And Whereas the Labour Court, Mangalore, has submitted to the State Government its award in respect of the industrial dispute.

Now, therefore, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above, in the **Karnataka Gazette.**

By Order and in the name of the Governor of Karnataka,

[No. SWL 261 LLA 73.]

1949

K. MYLARAPPA,

Under Secretary to Government,
Social Welfare and Labour Department.